No. 10909.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HAROLD C. STROTZ,

Appellant,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Appellee.

APPELLANT'S OPENING BRIEF.

SIMON & GARBUS,
242 North Canon Drive, Beverly Hills,
Attorneys for Appellant.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

TOPICAL INDEX.

TABLE OF AUTHORITIES CITED.

CASES.

STATUTES.

No. 10909.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HAROLD C. STROTZ,

Appellant,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Appellee.

APPELLANT'S OPENING BRIEF.

I.

Statement of Pleadings and Facts.

This is an appeal from an order of the District Court of the United States, Southern District of California, Central Division, in bankruptcy, Paul J. McCormick, Judge, reversing the order of the Referee, Ernest R. Utley, which order confirmed the Appellant's plan of arrangement under Chapter XI, and granted his discharge in bankruptcy.

The said District Court acquired jurisdiction of this proceeding, as a court of bankruptcy, pursuant to Chapter II, Section 2, Bankruptcy Laws, 1938.

The United States Circuit Court of Appeals for the Ninth Circuit, has jurisdiction of this appeal pursuant to Chapter IV, Section 24, Bankruptcy Law, 1938, this being

an appeal from a final order made and entered by the said District Court sitting therein as a court of bankruptcy. The total amount of the bankrupt's indebtedness as set forth in his schedule and amendment thereto is in the sum of $2,127,641.86. The total amount of claims filed in said bankruptcy proceeding by the creditors of the bankrupt is in the sum of $696,961.53. The claim of the Reconstruction Finance Corporation, the Appellee in this proceeding, is in the sum of $340,566.44, being based on an original claim of $210,000.00, plus an accumulated interest thereon over a period of approximately eight years.

The Appellant filed his petition and was adjudged a bankrupt pursuant thereto on October 23, 1940. [Tr. of Rec., p. 2.] Appellee thereafter filed its specifications of objection to discharge of the bankrupt. [Tr. of Rec., p. 63.] Appellant filed his written denial thereto. [Tr. of Rec., p. 68.] He then presented and filed on April 31, 1941, his petition for arrangement under Chapter XI, Section 231. [Tr. of Rec., p. 37.] Said petition having been rejected by a majority in amount and number of creditors, Appellant thereafter, on July 2, 1941, filed his amended petition for arrangement. [Tr. of Rec., p. 44.]

The Appellee filed its specifications of objections to said amended petition for arrangement. [Tr. of Rec., p. 70.]

Thereupon Appellant presented and filed an amendment to his petition for arrangement as amended. [Tr. of Rec., p. 51.] Said amendment to petition for arrangement as amended having been approved by a majority of the creditors of the bankrupt in amount and number, and Appellee, being the only objecting creditor, the Referee, on August 7, 1942, made and entered his decision confirming said plan of arrangement as amended. [Tr. of Rec., p. 75.]

Proposed findings of fact, conclusions of law and order were then submitted by the Appellant for the signature of the Referee. [Tr. of Rec., p. 84.]

Appellee then submitted and filed its objections to the said proposed findings of fact, conclusions of law and order, and petitioned the court for re-opening of hearings for submission of additional testimony. [Tr. of Rec., p. 92.]

The Referee then made and entered his findings of fact, conclusions of law and order confirming the said amended petition for arrangement as amended on December 2, 1942. [Tr. of Rec., p. 115.]

Appellee, on December 12, 1942, then filed its petition to review the order of the Referee made and enterd as aforesaid. [Tr. of Rec., p. 130.]

Appellee then filed its objections to the certificate of the Referee, upon its petition to review the orders entered by the said Referee on December 2, 1942, and together therewith submitted its proposed summary of the evidence of the proceeding. [Tr. of Rec., p. 152.]

The said order of the Referee was then reviewed by the Lower Court, and the Appellant and Appellee, having argued the matter as to whether the Referee's order confirming the Appellant's plan of arrangement as amended should be affirmed or rejected, the Court then, on May 15, 1943, made its memorandum and order re-referring the said proceedings to the Referee, in order to determine the ultimate validity of a claim of one of the creditors, and thus to determine whether adequate creditors in number and amount have accepted the Appellant's plan of arrangement. [Tr. of Rec., p. 163.]

The Referee thereupon found that the said creditor's claim was valid, and determined that adequate creditors in number and amount had accepted the Appellant's plan of arrangement.

The matter then again came on for hearing before the Honorable Paul J. McCormick for affirmation or rejecting the order of the Referee, as aforesaid. In this connection there was no oral argument, each side submitting the matter on briefs.

The Court then announced that it would not have sufficient time to read the entire reporter's transcript of the evidence in the proceedings and requested that each side submit the portions of the reporter's transcript which he or it believed would be in support of the briefs filed.

Portions of the transcript supporting the Appellant's discharge and plan were presented and filed by him on March 27, 1944. [Tr. of Rec., p. 234.]

A stipulation for diminution of the record on appeal consenting to this appeal, being confined to the evidence as it appears in the said portions of the reporter's transcript in lieu of the entire reporter's transcript of testimony taken in the Lower Court, was presented and filed in the above entitled Court on December 7, 1944. [Tr. of Rec., p. 256.]

The Lower Court made and entered its memorandum of decision and order on review of the Referee's orders on June 28, 1944, reversing the order of the Referee. [Tr. of Rec., p. 245.]

The Appellant filed his notice of appeal from the order of the Honorable Paul J. McCormick, dated June 28, 1944, as aforesaid, which notice of appeal was filed herein on August 3, 1944. [Tr. of Rec., p. 250.]

II.

Statement of the Case.

The question to be determined on this appeal is whether the Appellant committed acts which would be a bar to his discharge in bankruptcy and thus be not entitled to have his plan of arrangement confirmed.

The Appellant was indebted at the time of filing his voluntary petition in the sum of $2,127,641.86 to numerous creditors including the Appellee herein. All of this indebtedness arose out of the 1929 stock market crash and the economic depression which followed within two or three years thereafter. [Referee's Findings of Fact. No. 2, Tr. of Rec., p. 116.]

In 1936 the Appellant married a lady of some wealth who, upon her death, on September 13, 1938, bequeathed to him a net estate of approximately $11,500.00. This money was the only property or estate of consequence which came into his hands between August 12, 1930 and October 22, 1940, the date of the filing of the petition in bankruptcy herein. [Referee's Findings of Fact, No. 23, Tr. of Rec., p. 124.] A step-son of the Appellant, Jay Gould, financially assisted the Appellant from time to time prior to the filing of the petition in bankruptcy; and offered to contribute a substantial sum of money to the Appellant which he could voluntarily submit to his creditors in accordance with the various plans of arrangement filed herein, as aforesaid. [Referee's Findings of Fact, No. 24, Tr. of Rec., pp. 124 and 125.]

A majority of creditors in amount and number finally approved a plan of arrangement by the terms of which the sum of $32,000.00 would be paid to the creditors.

There was only one objecting creditor, that one being the Appellee.

The reversal of the order of the Referee was based upon what the Honorable Paul J. McCormick terms "two outstanding and incontroverted transactions by the debtor, an experienced man of affairs, designed to remove and conceal a substantial amount of his money and property from the reach of some of his creditors." One of these transactions is referred to as the so-called F. J. Ward bank account and as being an obvious instrument of concealment; the other is the alleged irregular method of distributing the funds of the estate of Anna Gould Strotz to himself as a residuary beneficiary without court order and the use of some of such money for his personal expenses. [Tr. of Rec., pp. 246 and 247.] These two transactions will be fully discussed in the argument of the case hereinafter presented.

III.

Specification of Errors Relied Upon.

A. The evidence does not support the findings of the United States District Court, as follows:

1. That the so-called F. J. Ward bank account was an obvious instrument of concealment.

2. That it was necessary for the Appellant, as executor of the estate of his deceased wife, to obtain a court order permitting him to distribute funds from said estate to himself as a residuary beneficiary.

3. That the distribution of funds from the estate of the deceased wife of the Appellant without a court order warrants the deduction that he thus intended to, or did conceal from, or defraud, hinder or delay his creditors.

B. That there is not sufficient evidence in support of the order of the Lower Court to the effect that the Appellant transferred, removed, destroyed, or concealed any of his property with intent to delay, hinder or defraud his creditors.

C. That the Appellants amended petition for arrangement under Chapter XI, Section 321, as amended, should have been approved and his discharge granted.

IV.

Argument of the Case.

A. There is not sufficient evidence in support of the order of the Lower Court to the effect that the Appellant transferred, removed, destroyed or concealed, or permitted to be removed, destroyed, or concealed, any of his property with intent to delay, hinder or defraud his creditors

1. The fact that the Appellant opened a bank account together with and in the name of his business associate F. J. Ward, does not make the act an "obvious instrument of concealment" as found by the Lower Court.

2. The fact that the Appellant, as executor of the estate of his deceased wife, distributed moneys from said estate to himself as a residuary beneficiary without an order of court, and the use of some of such moneys for his personal expenses, does not warrant a deduction that he thereby concealed, hindered or delayed his creditors.

B. The Appellant had no creditors who could have attached or levied execution upon the F. J. Ward bank account or the Appellant's share in his wife's estate.

C. There is no evidence in this case in support of the finding of the Lower Court to the effect that the proposed plan of arrangement is not feasible.

D. Appellate Court should not give the same weight to the findings of the District Court as it does to the findings of the Referee.

A. There is not sufficient evidence in support of the order of the Lower Court to the effect that the Appellant transferred, removed, destroyed or concealed, or permitted to be removed, destroyed or concealed, any of his property with the intent to delay, hinder or defraud his creditors.

1. The fact that the Appellant opened a bank account together with and in the name of his business associates, F. J. Ward, does not make the act an "obvious instrument of concealment," as found by the Lower Court.

The Referee made a finding to the effect that the Appellant did not conceal any of his property for the purpose of hindering, delaying or defrauding his creditors in connection with his having opened and maintained the so-called F. J. Ward bank account. Although there may be evidence in some measure conflicting in this regard, there is substantial evidence in support of this finding. While it is true that the appellant made deposits in said bank account aggregating $16,910.77 between October 22, 1939 and August 30, 1940, the Referee nevertheless found, and the evidence supported the finding, that there was but a small sum of money on deposit in this account at any one time within the twelve months prior to the commencement of the bankruptcy proceedings. [Referee's findings of fact, No. 12, Tr. of Rec., pp. 119 and 120.]

After listening to all of the testimony and having an opportunity to observe the Appellant on the witness stand, the Referee made a finding that the so-called F. J. Ward bank account was not maintained by the Appellant for the purpose of hindering, delaying or defrauding his creditors, or putting his property beyond the reach of his creditors. [Referee's Findings of Fact, No. 13, Tr. of Rec., p. 120.]

F. J. Ward was in truth and in fact an actual living person who was engaged in business together with the Appellant at a time when the Appellant was endeavoring to rehabilitate himself and perchance "strike it rich," so to speak, by wild-catting in the oil business. The witness, F. J. Ward, testified in this regard as follows:

> "Well, I can't remember the exact conversation but I do remember that the idea was that there would be a place where money could be deposited in connection with any future oil deal that could not be attached by his wife." [Portions of Rep. Tr. appearing in Tr. of Rec., p. 236.]

The evidence clearly shows that the F. J. Ward bank account was maintained by the Appellant openly and for a legal and meritorious purpose. The bank records indicated on their face that the Appellant had an interest in the said F. J. Ward bank account. [Trustee's Exhibit No. 2, Tr. of Rec., p. 195.] The Appellant did not conceal that fact from the bank or from any of his creditors. The existence of this bank account was frankly disclosed by the Appellant at the time, and in connection with, the filing of his petition in bankruptcy. The trustee obtained the information as to the existence of the F. J. Ward bank account solely and directly from the Appellant, and from no other source, upon the reading of the statement attached to the

petition in bankruptcy filed by the Appellant herein. In other words, this is not a case, and there is no evidence to the effect, that the Appellant failed to disclose, under oath or otherwise, the existence of the F. J. Ward bank account at any time. The bank account was not used as a secret depository but, on the contrary, it was an open and current account against which the Appellant wrote hundreds of checks which were issued by him to merchants throughout the entire county of Los Angeles and elsewhere. [See Trustee's Exhibit No. 2, Tr. of Rec., pp. 195 to 203.]

Certainly the finding of the Referee that the F. J. Ward bank account was not "an instrument of concealment" is supported by the evidence, as aforesaid, to the effect that the bank account was used openly. The contrary finding of the District Court is not supported by the evidence, and should not be given as much weight as the finding of the Referee who had the witnesses before him, observed their demeanor and was thus better able to determine their credibility.

The Appellant testified, with reference to the F. J. Ward bank account, that he used the same as a bank account for the purpose of paying his personal expenses including the department store accounts. The evidence in this regard is as follows:

> "Q. You had an account in the name of F. J. Ward? A. That is right.
>
> Q. What did you use that account for, the account in the name of F. J. Ward? A. I used it as a bank account.
>
> Q. To pay your personal expenses and things of that kind? A. Yes.
>
> Q. To pay your department store accounts? A. Yes." [Portions of Rep. Tr. appearing in Tr. of Rec., p. 236.]

At no time did the Appellant make or furnish a statement to any bank, creditor or other person whereby he failed to disclose the existence of the F. J. Ward bank account. Certainly this is not consistent with a finding that this account was "an instrument of concealment."

It is true that the Appellant voluntarily stated, in answer to a question, that one of the purposes of the F. J. Ward account was to prevent his "former wife" (not a creditor in this proceeding), from attaching his moneys. However, this is consistent with the plan of the Appellant to maintain a bank account which might better aid him in rehabilitating himself in some form of business without being embarrassed or harassed. The appellant testified in this regard that he was "continually harassed by sheriff's orders or something like that" and that he was 'just afraid to try and do anything.' [Portions of Rep. Tr. appearing in Tr. of Rec., p. 193.]

In this regard, however, there was no evidence introduced at any time to the effect that any of his creditors attempted to attach his bank account.

The mere fact that a person opens a bank account in the name of another is not presumptive evidence of the fact that the said bank account is used as an "instrument of concealment." If a person were intending to conceal money the last thing he would do would be to deposit that money in a bank account, whether in his name or in the name of another person. The law does not compel a person to deposit his money in a bank account. How then can it be maintained by the Lower Court that the F. J. Ward bank account was "an instrument of concealment"?

2. The fact that the Appellant, as executor of the estate of his deceased wife, distributed moneys from said estate to himself as a residuary beneficiary without an order of court, and the use of some of such moneys for his personal expenses, does not warrant a deduction that he thereby concealed, hindered or delayed his creditors.

The Appellant was the executor of the estate of his deceased wife, Anne Gould Strotz, acting without bond, which estate was at all times being probated in the County of Los Angeles, State of California. Certainly there was no concealment with reference to the probate of this estate by the Appellant. Immediately after the death of his wife, the Appellant filed his petition to probate her will and to be appointed executor thereof. It goes without saying that this petition for probate became a matter of public record to which the general public had access. Said petition for probate indicated on its face that the Appellant was an heir and beneficiary of the estate of his deceased wife, and that the value of her estate was more than $10,000.00. In this regard the Referee made a finding as follows:

> "That said probate estate and all of the proceedings held therein were at all times open to the general public and to the creditors of this bankrupt who, upon inquiry, could have determined the amount and nature and assets of said estate and the interest therein of the bankrupt . . ." [Tr. of Rec., p. 123.]

It is true that the Appellant distributed to himself as beneficiary of the estate of his wife, and while acting as the executor of said estate, the net sum of approximately $11,500.00. The Lower Court found that this distribution to himself by the Appellant was irregular, since there

was no court order authorizing final distribution at the time of payment. It is respectfully submitted that the Lower Court is in error in maintaining that said payment was "irregular." Certainly the payment was not "illegal."

It has been held by the Supreme Court of the State of California in the case of in re: *Bennett's Estate,* 13 Cal. (2d) 354, 90 p. (2d) 84, that it is not unlawful for an executor of an estate to make distribution of the assets thereof to the legatees without first obtaining a court order.

The evidence is uncontradicted that the Appellant, as executor of his wife's estate, and prior to making distribution to himself, paid in full all claims against the estate, all taxes and expenses of administration out of a gross estate of $38.000.00 from which he netted $11,500.00. The evidence in this regard is as follows:

> "A. I paid claims, paid taxes, paid expenses that I had which I was left with until I could get rid of the establishment that we had at the time." [Portions of Rep. Tr. appearing in Tr. of Rec., pp. 238 and 239.]

The Lower Court takes objection to the fact that the Appellant used some of the moneys received by him, as beneficiary, from his wife's estate for the purpose of paying his current living expenses. [Tr. of Rec., p. 247.] There is nothing unlawful in that; at best he would be thus making a preference in paying current rather than old debts. Could it reasonably be maintained that by so doing the Appellant concealed his property, or hindered or delayed his creditors? At the time of filing his petition in bankruptcy, the Appellant included a statement therein to the effect that he then had a remaining interest in the

estate of his deceased wife. Furthermore, attempts were made by the Appellant to settle with certain of his creditors out of the proceeds received by him from his wife's estate. The Appellant testified that actually he received less than the net of $11,500.00 since he had to use some of that amount for the business of the estate, his testimony in this regard is as follows:

> "A. In the first place I returned to the estate $3,400.00, so it does not amount to $11,500.00. You have the deposit back there later.
>
> A. But it wasn't any $11,500.00, I actually got around $8000.00. [Portions of Rep. Tr. appearing in Tr. of Rec., p. 239.]

It must be remembered that the Appellant was indebted in an amount in excess of $2,000,000.00. After a lapse of approximately seven years, during which period he had no moneys of any consequence, he finally came into possession of approximately $11,500.00. Little could have been expected from the Appellant in connection with meeting his obligations in the fabulous sum, as aforesaid. His only hope was to make token offers of settlement. This the Appellant did in certain cases and offered to do in others. In this connection the Appellant testified as follows:

> "Q. Have you made any payments to any creditors within the last year? A. Yes I have.
>
> Q. To whom? A. To Hamilton Vose, Jr.
>
> Q. How much? A. $500.00. [Portions of Rep. Tr. appearing in Tr. of Rec., pp. 242 and 243.]
>
> Q. You show Mrs. Bertha Feld, which you show as interest paid, $773.98, what is that? A. You

will find she is one of the people I owed money to. I paid her interest, lots of it in the past years. If you want to go on I can show you thousands of cases I paid interest. [Portions of Rep. Tr. appearing in Tr. of Rec., p. 244.]

I paid my attorney $1,000.00 in Chicago; Bekins Van & Storage, $1100.00. I will get the whole list for that of what I paid and it can be corroborated." [Portions of Rep. Tr. appearing in Tr. of Rec., p. 244.]

The Appellant made an offer, out of the proceeds derived from his wife's estate, to settle with one of his creditors. He testified in this regard as follows:

"We offered $1,000.00 to settle that case, Mr. Dechter, and counsel was going to find out from his client whether it would be accepted, and he didn't seem to be anxious about it at all." [Portions of Rep. Tr. appearing in Tr. of Rec., p. 239.]

Good economy would dictate to the Appellant that he should stretch his small inheritance in such a manner to discharge, if possible, all of his debts, which then exceeded the sum of $2,000,000.00. There is very little else which he could have been expected to do with $11,500.00, in the face of so overwhelming an indebtedness. To deny the Appellant his discharge in bankruptcy in the face of his tremendous debt and under the circumstances of this case would be to sentence him to everlasting financial and spiritual death, and to destroy the effect of the bankruptcy law as intended by Congress in a case such as this.

B. The Appellant had no creditors who could have attached or levied execution upon the F. J. Ward bank account or the Appellant's share in his wife's estate.

The Referee made an expressed finding to the effect that at the time the Appellant withdrew moneys from the estate of his deceased wife, there was no creditor of the Appellant then in a position to reach said money by levy of attachment or execution upon any judgment. [Tr. of Rec., p. 122, Finding No. 20.]

It is quite true that had the Appellant concealed from any of his creditors or hindered, delayed or defrauded any one of them within one year prior to the commencement of the bankruptcy proceedings, his discharge should be denied. However, there is no evidence in this case that the Appellant had *any* creditors whom he had hindered, delayed or defrauded.

The Lower Court relied on the case of *Duggins v. Heffron,* (C. C. A. 9), 128 F. (2d) 546, to the effect that it is irrelevant whether the concealment did or did not injure the creditors. In that case the Referee's findings were affirmed by the District Court. The concealment consisted of the bankrupt transferring real property to his wife and then failing to list that property in his schedule and swearing falsely with reference thereto. That case is not in point and has no bearing upon the facts in the case at bar. In the case at bar there was no property which the Appellant concealed from his creditors, and there was no finding of any false oath or statement on his part.

The Lower Court also relies upon the case of *Kolesinski v. Mashey,* (C. C. A. 2), 127 F. (2d) 528, to the effect that a concealment need not be from *all* of the creditors. In that case the bankrupt was examined in supplementary proceedings and was asked to produce all judgments held by him; he produced only worthless judgments but failed to produce the only judgment having any value. Quite obviously that was a concealment. But that case differs from the case at bar in that there was no supplementary proceeding or any examination of the Appellant at any time prior to bankruptcy during which he failed or refused to disclose his property, nor did he ever make false, fraudulent or incomplete statements to any of his creditors at any time.

C. There is no evidence in this case in support of the finding of the Lower Court to the effect that the proposed plan of arrangement is not feasible.

The Referee concluded from the facts that the proposed plan of arrangement was fair and equitable and for the best interests of the creditors. [Tr. of Rec., p. 127, Conclusion No. 2.]

The District Court, however, made a finding that the proposed plan of arrangement "is not feasible." [Tr. of Rec., p. 247.]

There is no evidence in the record to warrant or support the finding of the District Court in that regard. In any event appellant would be entitled to his discharge with or without the offered plan. The offer to pay $32,000.00 to his creditors is a voluntary act suggested by Jay Gould, the appellant's stepson.

D. Appellate Court should not give the same weight to the findings of the District Court as it does to the findings of the Referee.

It will be remembered, in this case, that the District Court reversed the order of the Referee granting to the Appellant his discharge, and approving his plan of arrangement whereby his creditors would receive the sum of $32,000.00 in cash. The District Court had no opportunity to hear the testimony of the witnesses and thus to determine their credibility, since only the cold record was available to the District Court. The record will show that numerous hearings were held before the Referee during which the Appellant and other witnesses testified at length with reference to the matters presented on this appeal. The Referee determined, after hearing all of the evidence and observing the demeanor of the witnesses, including the Appellant, that the Appellant had no intent to hinder, delay or defraud any of his creditors either in connection with the opening and maintaining of the so-called F. J. Ward bank account, or in making payments to himself as beneficiary of his wife's estate, without first obtaining a court order. At best there was a conflict of evidence on the question of concealment and intent to hinder, delay or defraud. It cannot be said that, as a matter of law, the mere opening of a bank account in the name of another is a "concealment," nor that merely by obtaining an advance as beneficiary, without a court order, one intends to conceal from his creditors.

It has been held that an Appellate Court will not give the findings of the District Court the same weight as if that court had seen and heard the witnesses, or had

affirmed the findings by the Referee by whom the witnesses had been seen and heard.

Wilson v. Hall, 81 F. (2d) 918.

The foregoing case relies upon the general order in *bankruptcy 47, Section 11 U. S. C. A., following Section 53.* That order is as follows:

> "The reports of referees . . . shall be deemed presumptively correct but shall be subject to review by the Court, and the Court may adopt the same, or may modify or reject the same in whole or in part when the Court in the exercise of its judgment is fully satisfied that error has been committed."

In this case we are confronted with the findings and conclusions of the District Court which are contrary to the findings and conclusions of the Referee. A similar situation occurred and was discussed in the case in in re: *Minota Building Co.,* 92 F. (2) 644, where the court stated as follows:

> "The Referee was the trier of the facts. He had these witnesses before him. In testing their credibility and the weight of their evidence, he had a distinct advantage over this Court and the Court below, neither of which ever had before it anything more than the cold record. The frankness and fairness shown by the witnesses, their attitute upon the witness stand and the extent to which their testimony was colored, if it was colored at all, by self interest, were important considerations in weighing their evidence and determining their credibility . . . the determination of a Referee in bankruptcy of issues of fact, based upon the evidence of witnesses appearing in person before him, where such determination must rest upon the credibility of the witnesses and

the weight of their evidence should ordinarily be accepted upon review, except in those cases where it is obvious that the Referee has made a mistake."

How can it reasonably be said that the Referee made "a mistake" in the case at bar? The Appellant told the Referee that when he opened the F. J. Ward bank account he did so merely for the purpose of preventing his former wife, who was not one of his creditors in this bankruptcy proceedings from interfering with his money matters. The Referee believed the Appellant. The Appellant told the Referee that he used that bank account openly and notoriously to pay his bills and to carry out the little business upon which he hoped to build his future. The Referee believed the Appellant in that regard. The witness, F. J. Ward, testified that the idea behind the opening of the F. J. Ward bank account was "that there would be a place where money could be deposited in connection with any future oil deal that could not be attached by his wife." [Portions of Rep. Tr. appearing in Tr. of Rec., p. 236.] The Referee believed the witness, F. J. Ward in that regard. The Appellant testified in person before the Referee that all of the debts of the deceased wife of the Appellant and all of her taxes and expenses of administration were paid in full, as aforesaid. The Referee believed the Appellant in that regard. The Appellant also testified that he offered to make settlements with certain of his creditors out of the moneys received by him from his wife's estate, and that he paid some of his creditors out of said moneys. The Referee believed the Appellant in that regard.

On what theory, therefore, could the District Court justifiably reverse the order of the Referee?

V.

Conclusion.

We respectfully submit that the order of the District Court should be reversed and that the Appellant is entitled to have his plan of arrangement confirmed and be granted his discharge in bankruptcy.

Respectfully submitted,

SIMON & GARBUS,

By MORTON GARBUS,

Attorneys for Appellant.